

# **Exhibit 32**

**IN THE  
UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**UNITED STATES OF AMERICA**

**v.**

**RICHARD THOMPSON**

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) **No. 15 CR 448**

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) **Judge Robert M. Dow, Jr.**

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)

**DEFENDANT THOMPSON’S STATUS REPORT ON COMPASSIONATE RELEASE  
MOTION AND REQUEST FOR ADDITIONAL COURT ACTION**

RICHARD THOMPSON, by the University of Chicago Law School’s Federal Criminal Justice Clinic and its attorneys, ALISON SIEGLER and ERICA ZUNKEL, and 711-Certified Law Student ELISABETH MAYER, respectfully submits this Status Report in response to new information about the continuing COVID-19 crisis at FCI-Butner Medium I and in Mr. Thompson’s “quarantine” area in particular. The situation is dire. Moreover, given new information we have learned from Mr. Thompson since the hearing, we are very concerned that the Bureau of Prisons may not heed the Court’s April 17, 2020, letter, which recommended that Mr. Thompson be released “as soon as possible, consistent with the advice of medical authorities.” As detailed in past filings, Mr. Thompson has a release plan in place, friends who will pick him up from Butner and drive him to Florida, and a place to self-quarantine. Mr. Thompson undoubtedly would be safer if he self-quarantines at his friends’ home rather than at Butner. Accordingly, Mr. Thompson requests that this Court submit an additional letter to the officials at Butner strongly recommending that Mr. Thompson be released on home confinement no later than 2:00 pm on Wednesday, April 22, 2020.

**A. The Continuing COVID-19 Crisis at Butner and the BOP’s Inadequate Response**

Butner is arguably the most dangerous BOP facility in the country right now. It is one of

the facilities with the most confirmed inmate and staff cases of any BOP facility.<sup>1</sup> As of today, 50 inmates and 27 staff at Butner have tested positive for COVID-19.<sup>2</sup> Given the limits of BOP testing, the real numbers likely are far higher. Counsel learned after the April 17, 2020, telephonic hearing that yet another inmate at Butner had died from COVID-19, bringing the total number of inmate deaths to five.<sup>3</sup> In its press release announcing the death, the BOP stated that the person suffered from “long-term, pre-existing medical conditions which the CDC lists as risk factors for developing more severe COVID-19 disease.”<sup>4</sup> As the Court is well aware, Mr. Thompson likewise suffers from long-term, pre-existing medical conditions that put him at high risk for developing serious complications if he were to contract COVID-19.

Since Friday’s hearing, Mr. Thompson has relayed to counsel additional details about the harrowing situation he faces as he waits to be released.<sup>5</sup> He is purportedly in “quarantine,” but distressingly, the BOP is not honoring that quarantine. Until at least April 10, 2020, inmates from other units came in and out of the “quarantine” area in the evenings with no monitoring, and people who were supposed to be “quarantining” continued to receive their food in the cafeteria from inmates from outside the unit who were not in “quarantine.” Even now, people within the unit are not able to social distance, as the CDC recommends. Mr. Thompson is not

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<sup>1</sup> See also Mitchell McCluskey et al., *A North Carolina Prison Complex has 60 inmates and 23 Staff Members with Coronavirus*, CNN (Apr. 12, 2020), <https://www.cnn.com/2020/04/12/us/butner-prison-coronavirus-cases/index.html> (“[FCC Butner] where an inmate died from Covid-19 Saturday has the highest number of coronavirus cases of any federal correctional complex in the United States, according to the Federal Bureau of Prisons (BOP).”).

<sup>2</sup> *COVID-19 Coronavirus page*, Federal Bureau of Prisons (Apr. 20, 2020), <https://www.bop.gov/coronavirus/index.jsp>.

<sup>3</sup> *5th inmate from federal prison in Butner dies from coronavirus, 91 COVID-19 cases reported*, CBS17.com (Apr. 17, 2020), <https://www.cbs17.com/news/local-news/5th-inmate-from-federal-prison-in-butner-dies-from-coronavirus-91-covid-19-cases-reported/>.

<sup>4</sup> *Inmate Death at FCI Butner I*, Federal Bureau of Prisons (Apr. 17, 2020), [https://www.bop.gov/resources/news/pdfs/20200417\\_press\\_release\\_bux.pdf](https://www.bop.gov/resources/news/pdfs/20200417_press_release_bux.pdf)

<sup>5</sup> Mr. Thompson approved counsel filing his communication publicly, in spite of his fears that the BOP may retaliate against him for revealing these details.

quarantined in an individual cell or a cell with one other person; he is improperly quarantined in close quarters with 48 other inmates. As Mr. Thompson puts it, everyone in this “quarantine” group is “required to violate social distancing guidelines with virtually every one of those inmates in order to live in this 50 by 130 [foot] building.”

Predictably, people at Butner remain at serious risk of contracting COVID-19. Mr. Thompson reports that “there are an increasing number of inmates coughing during the day and night” and says mask use indoors is considered “optional.” Consequently, “many do not wear them [as] they pile into lines to pick up food, meds, or temps taken at the door.” Over the weekend, one of the “quarantined” inmates had a temperature of more than 100 degrees. Staff required him to sit outside in a colder temperature and then re-tested him. Although he re-tested at a sub-100 degree temperature, from all indications, the person is clearly very sick. According to Mr. Thompson, the sick man “spends all day in bed sleeping or catatonic. He does not get up for delivery of meals, medications, and temperature checks so he is not incapacitated, but his condition is such that we have only seen him bathe once in the last week.” The sick man’s bunk is one of six bunks huddled together in the “quarantine” unit and through which people must pass to get to the bathroom. To make matters even worse, just today, Mr. Thompson reports that it is his understanding that the BOP is moving two people from his 48-person “quarantine” unit to the Chapel for isolation because they either spiked a fever or tested positive for COVID.

Because of the haphazard and dangerous way that the BOP is “quarantining” inmates at Butner, Mr. Thompson and counsel are incredibly concerned that he may not survive the “quarantine.” Mr. Thompson was originally scheduled to be released to a Residential Reentry Center (RRC) on April 22, 2020. As detailed in his message to counsel, he is now scheduled to be released on April 29, 2020, but only if he has “fourteen days of successful quarantine.” On

approximately April 15, a person was removed from the “quarantine” unit because he was sick. That “re-started” Mr. Thompson’s “quarantine clock.” There is no knowing whether the process of the BOP moving sick people from Mr. Thompson’s unit into the Chapel today will again restart the clock, even as there is a good chance that he and the others in his quarantine unit have now been exposed to COVID-19. At this rate, it may never end. As Mr. Thompson explains, “If inmates here continue to infect each other, we could have a new case every seven to ten days. Each time our quarantine period will be exp[a]nded. There is no proposal to test anyone, we may have had several people enter quarantine already infected but asymptomatic.” It is clear that Mr. Thompson’s chances of contracting COVID-19 while in this improper “quarantine” environment are increasing daily, and probably exponentially.

Today, District Judge Allison Nathan of the Southern District of New York, granted the compassionate release motion of a person incarcerated at Butner, calling Butner’s current “quarantine” process “Kafkaesque,” “illogical,” “senseless,” and “self-defeating.” *United States v. Scparta*, No. 18-cr-578, ECF No. 69, at 2, 6 (S.D.N.Y. Apr. 20, 2020). The case is strikingly similar to Mr. Thompson’s. Mr. Scparta had filed an administrative request with the BOP and an emergency motion for compassionate release. While the motion was pending, the BOP concluded that release on home confinement was appropriate. That was not sufficient, however. As Judge Nathan wrote, “One might conclude that this admirable decision would resolve the issue and moot the compassionate release motion. Unfortunately it does not. That is because the BOP has determined that Mr. Scparta must remain in custody during the peak of the pandemic for what it labels a ‘14-day quarantine’—but his current confinement is neither a quarantine nor limited to 14 days.” The order goes on to describe nearly identical conditions to what Mr. Thompson has detailed at Butner, including crowded quarters in the “quarantine” area, lack of

testing, and an absurd policy of re-starting the quarantine clock every time someone gets sick. *Id.* at 4–5. “The Court speaks in stark terms: this is an illogical and self-defeating policy that appears to be inconsistent with the directive of the Attorney General, ungrounded in science, and a danger to both Mr. Scparta and the public health of the community.” *Id.* at 6. Judge Nathan ordered Mr. Scparta released from custody “immediately” with a requirement that he self-isolate at home for fourteen days. *Id.* at 20. Notably, to reach her decision, Judge Nathan reversed her conclusion from a prior case that the exhaustion requirement was not waivable, determined that “the First Step Act’s text, history, and structure all counsel in favor of concluding that the statute’s exhaustion requirement is amenable to equitable exceptions,” *id.* at 15, and excused Mr. Scparta’s failure to exhaust, *id.* at 16; *see also id.* at 2 (quoting Justice Frankfurter’s warning: “Wisdom too often never comes, and so one ought not to reject it merely because it comes late.”).

Others echo Mr. Thompson’s accounts about the BOP’s inadequate and incompetent response to COVID-19. Brian Bronson, who was recently released from Butner, described the situation there as “chaos.”<sup>6</sup> “The Bureau of Prisons has no clue what to do about COVID-19.” *Id.* He said that people “are so concerned” about contracting COVID-19 that “they would rather escape and be caught by the U.S. marshal later after the coronavirus has died down.”<sup>7</sup> Richard Cephas, 54 years old, was so desperate that he walked away from Butner’s work camp about two weeks ago out of “fear of COVID-19 and the prison’s woeful lack of ability to contain it.”<sup>8</sup>

Inmates and correctional staff at FCI-Oakdale, another BOP facility that has been devastated by COVID-19, describe circumstances that are eerily similar to what is happening at

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<sup>6</sup> ‘It was chaos’: Former Butner prison inmate describes life inside a coronavirus hot zone, ABC11 (Apr. 17, 2020), <https://abc11.com/coronavirus-nc-richard-cephas-brian-bronson/6112184/>.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

Butner. Correctional workers “who believe they were exposed to the virus . . . have requested extra sick leave to self-quarantine but have been denied.”<sup>9</sup> Meanwhile, “older inmates . . . are panicking. They’re doing anything they can to get their paperwork in to do compassionate releases, and the case managers are getting overwhelmed with all the paperwork coming in for that.”<sup>10</sup> Even in areas that are supposed to be under “quarantine,” inmates are “all in their dorms. They’re cleaning the floors, cleaning the bathrooms and the showers and pretty much doing their normal routines. I mean, they’re still in the dorm within arm’s length away from each other. On quarantine.”<sup>11</sup>

As conditions worsen, lawyers and advocates are desperately but futilely asking the BOP to release more people on home confinement. David Patton, the executive director of the Federal Defenders of New York, reported on April 17, “[a]s far as we can tell, they’re not [doing that].”<sup>12</sup> Patton believes that 50,000 to 60,000 people in the BOP may qualify for release under Attorney General William J. Barr’s April 3, 2020 directive.<sup>13</sup> Those who are approved, like Mr. Thompson, face a “boomerang, where [the BOP is] slow-playing it well after the 14-day quarantine that was the contingent.”<sup>14</sup> FCI-Oakdale, another prison in crisis where seven inmates have died from COVID-19, is the subject of a lawsuit by the American Civil Liberties Union. Attorneys say that only three people have been released on home confinement since Attorney

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<sup>9</sup> Janet Reitman, *‘Something Is Going to Explode’: When Coronavirus Strikes a Prison*, New York Times (Apr. 18, 2020), <https://www.nytimes.com/2020/04/18/magazine/oakdale-federal-prison-coronavirus.html>.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* (“Correctional officer 2”)

<sup>12</sup> Anna Giaritelli, *Tens of thousands of inmates unlawfully denied home confinement as pandemic rages: Prisoner advocates*, Washington Examiner (Apr. 17, 2020), [https://www.washingtonexaminer.com/news/tens-of-thousands-of-inmates-unlawfully-denied-home-confinement-as-pandemic-rages-prisoner-advocates?utm\\_source=smartnews&utm\\_medium=feed](https://www.washingtonexaminer.com/news/tens-of-thousands-of-inmates-unlawfully-denied-home-confinement-as-pandemic-rages-prisoner-advocates?utm_source=smartnews&utm_medium=feed).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

General Barr's directive.<sup>15</sup> "BOP is slow walking the release, testing, and care at [FCI-Oakdale], and the consequence is human life."<sup>16</sup> The lawsuit alleges people at the prison have COVID-19 symptoms like "coughing and diarrhea, but do not receive medical attention until they have a fever or are pale, sweating."<sup>17</sup>

The BOP's shifting sands approach to Mr. Thompson's own release date and place of release flies in the face of Barr's directive and threatens Mr. Thompson's life. Barr's directive provides the BOP with discretion to immediately release people who have been approved for home confinement and does not require a fourteen-day quarantine.<sup>18</sup> Moreover, the BOP's approach makes no sense. Everyone agrees that Mr. Thompson should be released. His release plan has been approved. Phil Bracken and Wonnieshafer stand ready to drive to Butner to pick Mr. Thompson up on a moment's notice. They will take all precautionary measures on the drive back to Florida and Mr. Thompson will self-quarantine in a separate room once they arrive.

In light of the new information in this Status Report, Mr. Thompson cannot count on the BOP to protect his safety. The new information detailed above casts grave doubt on whether the Bureau of Prisons will abide by the Court's request in its April 17, 2020, letter. Additional court intervention is required. Accordingly, Mr. Thompson respectfully requests that the Court submit an additional letter recommending that the BOP release him on home confinement no later than 2:00 pm on Wednesday, April 22, 2020. That will allow Mr. Bracken and Ms. Shafer sufficient

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<sup>15</sup> Kevin Johnson, *'People are falling sick every day: ' Lawsuit accuses feds of 'slow-walking' releases at troubled Louisiana prison*, USA Today (Apr. 13, 2020), <https://www.usatoday.com/story/news/politics/2020/04/13/coronavirus-bureau-prisons-accused-delays-louisiana-releases/2981731001/>.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> See William J. Barr, *Increasing Use of Home Confinement at Institutions Most Affected by COVID-19* (Apr. 3, 2020), [https://www.fd.org/sites/default/files/covid19/bop\\_jail\\_policies\\_and\\_information/barr\\_memo\\_caresact\\_a\\_pr3\\_2020.pdf](https://www.fd.org/sites/default/files/covid19/bop_jail_policies_and_information/barr_memo_caresact_a_pr3_2020.pdf).



time to drive to Butner and pick him up.

Dated: April 20, 2020

Respectfully submitted

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**CERTIFICATE OF SERVICE**

The undersigned, Erica Zunkel, an attorney with the University of Chicago Law School's Federal Criminal Justice Clinic, hereby certifies that in accordance with Fed. R. Crim. P. 49, Fed. R. Civ. P. 5, L.R. 5.5, and the General Order on Electronic Case Filing (ECF), the following document:

**DEFENDANT THOMPSON'S STATUS REPORT ON COMPASSIONATE RELEASE  
MOTION AND REQUEST FOR ADDITIONAL COURT ACTION**

was served pursuant to the district court's ECF system as to ECF filings on April 20, 2020.

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